

CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

FASSBERG CONSTRUCTION
COMPANY,

Plaintiff, Cross-defendant and
Appellant,

v.

HOUSING AUTHORITY OF THE
CITY OF LOS ANGELES,

Defendant, Cross-complainant and
Appellant.

B181989

(Los Angeles County
Super. Ct. No. BC290195)

ORDER MODIFYING OPINION
AND DENYING REHEARING
[NO CHANGE IN JUDGMENT]

THE COURT:

It is ordered that the opinion filed herein on May 24, 2007, be modified as follows:

1. The opinion was certified for partial publication in the Official Reports. For good cause, it now appears that the entire opinion should be published in the Official Reports, and it is so ordered.
2. Page 1, at the bottom of the page, delete footnote.

3. On page 4, line 2, delete the words “in the unpublished portion of the opinion.”

4. On page 19, insert a new paragraph after line 7, reading as follows:

The Housing Authority argues that Government Code section 12651, subdivision (a) is ambiguous and should be construed to mean that “false claims” includes not only requests or demands for money, property, or services, but also any other act prohibited by the California False Claims Act. This argument ignores the statutory definition of “claim” (*id.*, § 12650, subd. (b)(1)) and the careful, not haphazard, use of “false claims” in some places and “false records or statements” in others in section 12651, subdivision (a). Those terms are not interchangeable. As we have explained, the Legislature carefully distinguished the remedies available for different acts.

5. On page 28, at the end of the first full paragraph, after the sentence ending “civil penalty,” add as footnote 15 a footnote with the following text, which will require renumbering of all subsequent footnotes:

We reject the Housing Authority’s argument that Fassberg invited any error with respect to the number of false claims by failing to object to a jury instruction that permitted the jury to conclude that acts other than requests or demands for money,

property, or services constituted false claims. The Housing Authority acknowledges that Fassberg did not request the instruction, but argues that Fassberg had numerous opportunities to object to the instruction, yet failed to object at any time before the verdict. An error is invited only if the appellant induced the commission of error through its own conduct. (*Norgart v. Upjohn Co.* (1999) 21 Cal.4th 383, 403.) The mere acquiescence in or failure to object to an instruction is not invited error. (*Huffman v. Interstate Brands Corp.* (2004) 121 Cal.App.4th 679, 706-707.) Moreover, the giving of a jury instruction is deemed excepted to. (Code Civ. Proc., § 647.)

6. Page 45, line 2, delete asterisk and footnote designated by asterisk.
7. Page 60, line 1, delete asterisk and footnote designated by asterisk.
8. Page 63, line 7, delete asterisk and footnote designated by asterisk.

[There is no change in the judgment.]

The petition for rehearing by Fassberg Construction Company is denied.